

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

UNITED STATES OF AMERICA	)	JUDGE DONALD C. NUGENT
	)	
Plaintiff,	)	CASE NO.: 1:08 CR 506
	)	
vs.	)	<u>MEMORANDUM OPINION</u>
	)	<u>AND ORDER</u>
ANTHONY L. VIOLA,	)	
	)	
Defendant.	)	

This matter is before the Court on Defendant, Anthony L. Viola's Motion to Reconsider Court Order Dated February 27, 2015. (ECF #474). In that Order the Court denied Mr. Viola's Motion to Compel Production of FBI Records. The U.S. Department of Justice, Office of Information Policy ("OIP Office") has already ruled in Mr. Viola's favor on his initial request remanding his case to the Federal Bureau of Investigation ("FBI") for the production of all "releasable records."

Apparently unsatisfied with the time it was taking the FBI to respond to the remanded request, Mr. Viola sought an Order compelling production of responsive records by a date certain. This Court denied that request because there were two notices of appeal filed by Mr. Viola which divested this Court of jurisdiction over the case. *See, United States v. Garcia-Robles*, 562 F.3d

763 (6<sup>th</sup> Cir. 2009). Further, the Court found that Mr. Viola had no standing to file a motion to compel because he has not exhausted his administrative remedies under the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(B) and (C). *See, United States v. Reed*, 1994 WL 524088 (6<sup>th</sup> Cir. Sept. 26, 1994), citing *In re Steele*, 799 F.2d 461, 465-66 (9<sup>th</sup> Cir. 1986).

Mr. Viola now asserts that he exhausted his administrative remedies without success by writing to the U.S. Department of Justice Office of Information Policy (“OIP Office”) in an attempt to appeal the Federal Bureau of Investigation’s failure to respond to his information requests. However, as the OIP Office pointed out in its response, this was not the proper mechanism to pursue this issue. Because there has been no adverse determination by the FBI on Mr. Viola’s remanded request, there is not yet any adverse decision for the OPI Office to review. If the FBI refuses the request, an appeal may then be taken to the OIP Office. If the FBI takes longer than the statutorily permitted amount of time to respond, post-remand, the Freedom of Information Act provides that requesters may file a lawsuit pursuant to 5 U.S.C. § 552(a)(6)(C)(I).

The OIP Office has indicated that it did inquire with the FBI on Mr. Viola’s behalf and was assured that the remanded request is currently being processed by the FBI. The OIP Office has also provided Mr. Viola with the contact information necessary to allow him to track the status of his request. If this does not resolve the issue, any lawsuit alleging a failure by the FBI to respond within the statutory time frame should be filed as a new civil action pursuant to the Freedom of Information Act. Any complaints relating to an adverse determination regarding the releasability of the requested records must proceed through the proper administrative channels. Neither of these issues are properly before this Court as part of the criminal case that this Court has been assigned to oversee.

For these reasons the Motion for Reconsideration (ECF #474) is DENIED. IT IS SO ORDERED.

/s/ Donald C. Nugent  
DONALD C. NUGENT  
United States District Judge

DATED: July 21, 2015